

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

VALENTINE FERTITTA,

Plaintiff,

v.

Civ. No. 22-966 GJF/SCY

MERRICK GARLAND, in his  
Official capacity as Attorney General  
Of the United States of America,

Defendant.

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO COMPEL**

For the reasons stated on the record at the July 29, 2024 motion hearing, the Court GRANTS IN PART and DENIES IN PART Plaintiff's Motion To Compel & Memorandum In Support Thereof, Doc. 51, as follows:

1. Interrogatory 2: The Court grants the motion to compel. Responsive information includes sick leave, dental leave, and FMLA. It does not include annual leave. Defendant may file a motion to clarify if the parties cannot agree whether a category of leave is responsive.

2. Interrogatory 7 and Request for Production 9: The Court denies as moot the request to compel the portions of this interrogatory to which the government responded (the first part of (c) and (d)). The Court denies the motion to compel further responses. The Court denies the motion to compel with respect to Request for Production 9.

3. Requests for Production 4 and 10: The motion is granted with respect to documents, correspondence, and information in the personnel file concerning the witness's character for truthfulness. The motion to compel is granted insofar as it requests production of

any comments that SSA Giles was driven by statistics. The motion to compel with respect to Requests for Production 4 and 10 is denied in remaining part.<sup>1</sup>

4. Request for Production 7: The Court orders counsel for Defendant to provide Defendant with the declarations from Plaintiff (Doc. 59) and Sepulveda (Doc. 54) and ensure the person conducting a search does so diligently. The Court does not order Defendant to conduct its search in any specific manner. However, if the United States maintains its position that the responsive documents do not exist, in deciding whether its search was diligent the Court will consider the actions Defendant took. If responsive documents exist, the Court orders Defendant to produce them. The Court does not order Defendant to produce what it does not have.

5. Supplemental responses are due August 28, 2024. Each side will bear its own costs.

SO ORDERED.

  
STEVEN C. YARBROUGH  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> The Court agrees with Plaintiff that complaints, concerns, or disputes concerning SSA Giles's that pertain to discrimination or retaliation for the assertion of a protected right are discoverable. The government represents that it has conducted a diligent search for such information and that there are no responsive documents. As such, no information exists in this category for the Court to compel the government to provide.